HEARING BEFORE THE

COMMITTEE ON RESOURCES

Subcommittee on Energy and Mineral Resources

U.S. HOUSE OF REPRESENTATIVES

With respect to HR 2952

Powder River Basin Resource Development Act

OCTOBER 11, 2001

STATEMENT OF

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STATEMENT OF VERNON A. ISAACS, JR.

CURRICULUM VITAE

Vernon A. Isaacs, Jr. is the Chairman and one of the principals of RIM Operating, Inc. RIM is a Denver-based producer of oil and gas, with 475 operating wells on 130,000 leased acres in five states, including Wyoming. RIM holds significant interests in oil and gas, particularly coalbed methane, in the Powder River Basin in Campbell County, Wyoming. Prior to founding RIM, Mr. Isaacs consulted with various major and independent oil companies on producing property acquisitions and dispositions. From 1976 through 1984, Mr. Isaacs worked for Petro-Lewis Corporation, serving as Manager of Acquisitions and Senior Vice President. He has held several other positions with various companies in the oil and gas business.

Mr. Isaacs received his degree in petroleum engineering from the Colorado School of Mines in 1964. He served with distinction as a First Lieutenant with the 101st Airborne in Vietnam and received numerous commendations, including the Silver Star, Bronze Star and Purple Heart.

Mr. Isaacs has also served as the Chairman of the Coalbed Methane Committee of the Independent Petroleum Association of Mountain States ("IPAMS"). IPAMS is a non-partisan association representing nearly 1,000 independent oil and gas producers, supply companies, bankers and industry consultants in a thirteen state Rocky Mountain region, including the State of Wyoming.

I. INTRODUCTION

HR 2952 has been introduced to attempt to resolve conflicts between coal producers and producers of coalbed methane ("CBM") in portions of the Powder River Basin ("PRB"). Effectively, HR 2952 grants coal producers the right to condemn, vent and waste CBM and to deduct the costs of condemnation from payments of their federal coal royalties. Certain oil and gas associations, including the Independent Petroleum Association of Mountain States ("IPAMS"), oppose HR 2952 as drafted. This testimony is offered on behalf of RIM Operating, Inc. and its affiliates ("RIM"), which hold leasehold and operating

rights to CBM covering more than 30,000 acres in the PRB.

RIM recognizes and greatly appreciates Representative Cubin's longstanding support of the energy industry. But, as promoted by certain interested parties, HR 2952 itself is ill conceived and counterproductive.

RIM supports the BLM's formal policy for resolving this type of conflict, as set forth in Instruction Memorandum No. 2000. This policy emphasizes the BLM's use of various regulatory tools at its disposal in order to encourage the consensual resolution of conflicts between coal and CBM producers and to optimize the recovery of both resources. This policy was introduced in February of last year and is working well. RIM and its partners have entered into three separate joint development agreements ("JDAs") with two major coal mines, resolving conflicts on more than 10,000 acres of federal land. Pursuant to these JDAs, RIM is rapidly producing CBM in advance of the coal mines and coal mining is proceeding without any delays whatsoever. The parties are cooperating and coordinating their operations and the production of both coal and CBM is being optimized. This has all been accomplished by consensual agreement, without the need for federal legislation, the suspension or termination of oil and gas leases, the taking of vested senior property rights, the use of federal subsidies and tax credits or administrative and judicial condemnation proceedings, all of which are contemplated under HR 2952.

RIM has now resolved all of its conflicts with the coal companies in the PRB and should not itself be affected, one way or the other, by HR 2952. But I am testifying today against HR 2952 because I strongly believe that it is bad law and bad policy. It is legislation that inappropriately favors one industry over another, creates dangerous precedent, is costly to the taxpayer and, perhaps most importantly, is totally unnecessary.

HR 2952 encourages the condemnation, venting and waste of CBM into our atmosphere at taxpayer expense, rather than promoting the cooperative production and recovery of all valuable energy resources. HR 2952 delegates the sovereign's power of condemnation to private coal companies and allows that power and federal funds to be used to terminate vested senior property rights held by smaller oil and gas companies. The bill erodes the sanctity of private property and the certainty of rights that have allowed parties to invest with security in the development of our country's natural resources and sets a dangerous precedent for management of our public lands and resources.

HR 2952 unnecessarily involves the Federal government, Federal legislation and Federal subsidies in what is essentially a private and local dispute that can readily and equitably be resolved through private agreement, as such conflicts have routinely been resolved in the past. Without the inducement of the "better deal" that certain coal companies hope to obtain through HR 2952 at taxpayer expense, conflicts in the PRB can quickly be resolved through private negotiation and agreement, with no delays whatsoever to coal operations. Such agreements can provide for the cooperative recovery of coal and CBM and have already been successfully negotiated and implemented in the PRB.

HR 2952 is a bad bill for the environment and for the prudent stewardship of our non-renewable natural resources. The bill encourages the condemnation and venting into the atmosphere of substantial amounts of methane, one of the most potent greenhouse gases. The detrimental effects of this venting on the environment are not fully understood. At the same time, the bill allows large volumes of CBM to be lost and wasted forever, rather than captured and put to beneficial use as a clean burning fuel. In order to meet the dramatically increasing demand for natural gas in the United States, we need to develop policies that encourage the recovery of this valuable non-renewable resource, not enact legislation that results in its irrevocable loss for all generations.

HR 2952 is also a bad bill for the Federal budget. Not only will Federal royalties on coal be reduced to reimburse coal companies for amounts paid to condemn CBM, but no royalties or taxes will be paid on the CBM that is condemned and vented rather than produced.

If, notwithstanding the serious policy issues outlined above, Congress is intent on enacting condemnation legislation, HR 2952 nevertheless contains serious flaws and inequities. HR 2952 does not provide full or fair compensation to CBM lessees for the loss of their resource. The bill requires that compensation be paid for only a small portion of the CBM that will actually be lost and wasted as a result of coal mining. HR 2952 is convoluted, difficult to understand and embodies certain other procedural and constitutional shortcomings. In particular, the grant of powers of condemnation to private coal companies, coupled with their ability to exercise that right by payment of less than full and fair compensation, raises serious constitutional questions. Even more disturbingly, HR 2952 has been promoted based upon certain distortions and misrepresentations, particularly regarding the purported need for condemnation legislation.

When similar legislation was first introduced two years ago, the coal companies argued that the legislation was needed in order to resolve conflicts with RIM and its CBM partners, that there was no commercially valuable CBM in the conflict area and that RIM had no intention of actually developing and producing the CBM, but was instead motivated solely by a desire to reap a supposed windfall from the coal companies. All of these assertions have been proven false. As noted above, RIM has entered into three joint development agreements, with two major coal mines, covering more than 10,000 federal acres and resolved all of its conflicts. Pursuant to these agreements, both coal mining and CBM production are proceeding in the conflict area. RIM has already drilled 95 CBM wells in the conflict area itself and 28 additional wells on immediately adjacent acreage. RIM is drilling eight new CBM wells in the Hilight Field every month. CBM production from the South Hilight Unit has recently been averaging 11,000 MCF per day and in the past nine months a total of 2.336 billion cubic feet of CBM has been sold. Installed compression capacity on the conflict acreage presently totals 13,500 MCF per day and requests are pending for an additional 4,500 MCF per day. RIM and its partners have spent approximately $6.5 million in developing the conflict acreage and present estimates of the CBM reserves in this area are 25 to 30 billion cubic feet. This is a substantial amount of CBM that is being produced to meet our country's energy needs and on which severance taxes and production royalties are being paid to state and federal governments. Moreover, pursuant to these joint development agreements, coal mining has not and will not be delayed even one day.

When the predecessors of HR 2952 were introduced, several legislators strongly encouraged RIM to resolve its conflicts with the coal mines consensually to show that condemnation legislation is not needed. They also suggested that RIM should develop and produce its CBM as a means of demonstrating the legitimacy of its concerns and positions. We have done everything that has been asked of us and it should now be time to end the debate regarding the need for condemnation legislation.

II. BACKGROUND

The conflict between coal and CBM operators in the PRB has focused upon an area of Campbell County, Wyoming covered by the Hilight oil and gas field (the "Hilight Field").[1] In order to understand the present conflict, it is essential to understand recent events relating to the Hilight Field and the manner in which conflicts have been successfully resolved to date.

The Hilight Field has been producing oil and gas, primarily from deep formations, for several decades. In the past seven years, production of gas from the Hilight Field has increased dramatically and numerous wells that were previously shut-in have been returned to production. This increase in product is attributable partially to secondary recovery of deep gas and partially to the development of CBM, which has become highly attractive and valuable due to the recent construction and commissioning of pipelines and gas gathering facilities.

The oil and gas unit at the southern end of the Hilight Field is known as the South Hilight Unit (the "SHU"). RIM holds leasehold land operating rights to CBM in the SHU, primarily under senior Federal oil and gas leases dating back to the 1960s. M&K Oil Company ("M&K") holds leasehold and operating rights to the deep oil and gas within the SHU under the same leases.

Two major coal companies, Arch Coal Company and its affiliates ("Arch") and Kennecott Energy Company and its affiliates ("Kennecott") have surface coal mines in the area. Arch's Black Thunder mine has been approaching the SHU from the south and Kennecott's Jacobs Ranch Mine has been approaching the SHU from the southeast.

The potential conflict between the oil and gas operators and the coal operators came to a head in connection with the issuance of the Thundercloud Federal Coal Lease (WYW 136458, referred to hereinafter as the "Thundercloud Coal Lease") effective as of January 1, 1999. The Thundercloud Coal Lease covers lands within and immediately adjacent to the SHU, including substantial acreage covered by RIM's and M&K's senior oil and gas leases. The Thundercloud Coal Lease itself was issued to Arch, but on April 29, 1999, the Bureau of Land Management ("BLM") approved an assignment of a portion of the Thundercloud Coal Lease to Kennecott.[2]

RIM was understandably quite concerned about the issuance of the Thundercloud Coal Lease. Surface coal mining within the SHU would cause the irretrievable venting and waste of the CBM resource. Coal mining destroys the reservoir in which the CBM resides and directly vents CBM into the atmosphere. Moreover, the exposure of the coal seam causes a drop in reservoir pressure. This acts like a hole in a tire, and CBM from throughout the area will flow through the porous coal structure to the mine face and be lost through venting. RIM has provided to the BLM a rigorous study which establishes that, even prior to the initiation of mining on the Thundercloud Coal Lease, the Jacobs Ranch and Black Thunder Mines were causing the drainage, venting and losses in excess of 500 million cubic feet of CBM from the SHU per year.[3] This study was accepted and approved by the BLM.[4]

Following the issuance of the Thundercloud Coal Lease, the BLM and the State of Wyoming encouraged negotiations to resolve operational conflicts on the Thundercloud Tract. In April 1999, at the suggestion of the Powder River Basin Regional Coal Team, the BLM convened a federally supervised mediation involving coal companies (including Arch and Kennecott), oil and gas producers (including RIM and M&K), the State of Wyoming and Federal agencies (including the BLM and the Minerals Management Service). At the Federal mediation, the BLM re-emphasized that intractable conflicts would be resolved by the BLM on the basis of the "first in time, first in right" doctrine, but urged the parties to negotiate consensual agreements that would: (i) allow surface coal mine operations to proceed; (ii) encourage the cooperative and contemporaneous production of both coal and oil and gas; and (iii) fairly compensate the senior oil and gas lessees for resources unavoidably lost due to the advancing coal mines. While productive discussions were held between certain parties, the mediation did not immediately result in any agreements.

On May 21, 1999, the BLM sent representatives of Arch, Kennecott, RIM and M&K a letter indicating that the BLM would not, at least for the time being, approve any APD permits (for CBM or oil and gas drilling) or R2P2 permits (for surface coal mining operations) on the Thundercloud Tract.[5] Confronted with this obstacle to their respective operations on the Thundercloud Tract, Arch and RIM entered into focused negotiations and, three months later, entered into a Joint Development Agreement dated September 1, 1999 (the "Arch JDA").

The Arch JDA demonstrates clearly both that coal companies in the PRB do not need the right of condemnation and that consensual agreements can provide a vastly superior resolution. The Arch JDA was accomplished through creative and good faith negotiations between Arch and RIM, with significant support, involvement and encouragement from the State of Wyoming and the BLM. While the Arch JDA may not represent an ideal outcome for either Arch or RIM, and while some degree of necessity and urgency may have been required to bring the parties together and get the deal done, it is nevertheless an essentially fair and equitable compromise and results in the cooperative production of both coal and oil and gas.

Following the execution of the JDA, each of Arch, RIM, the State of Wyoming and the BLM entered into a Memorandum of Understanding (the "MOU") which formally acknowledges, supports and blesses the JDA.

In the MOU, the State and the BLM acknowledged and confirmed the "appropriateness of the arrangements and agreements between Arch and RIM." In cover letters, the BLM acknowledged its participation in the mediation process and stated its belief that "this agreement is a reasonable attempt to optimize production of both resources from the Thundercloud lease"[6] and the State of Wyoming commented that it "has supported the process, believes that the agreement is a rational solution to the conflict and is willing to be a signatory to the agreement."[7]

In contrast to HR 2952, which encourages the condemnation, venting and waste of CBM so that coal can be produced, the Arch JDA encourages the cooperative production of both of these non-renewable energy resources. Under the Arch JDA, Arch (which is the junior lessee) is allowed to pursue its surface coal mining operations without interference, restriction or delay and RIM is encouraged to drill and operate CBM wells in advance of the coal mine. The parties work closely together to coordinate their respective operations and use of surface facilities (which cooperation cannot effectively be mandated by Federal legislation). When the face of Arch's coal mine comes within a critical distance of a CBM well, RIM is required to curtail production and abandon the well. In consideration, Arch compensates RIM for the loss of remaining production.

Both Arch and RIM recognized that the value of RIM's CBM wells would be dramatically impacted by the approach of Arch's surface coal mine. As a surface coal mine approaches a CBM well, reservoir pressure is reduced and CBM throughout the area is drawn to the mine face and vented into the atmosphere. By the time that the coal mine arrives, a CBM well will be rendered virtually worthless. Accordingly, the Arch JDA values lost production by reference to a model CBM well for the area, with stated characteristics of quantity and life of production. This model reflects an estimate of the producing characteristics of a local CBM well unaffected by surface coal mining operations. Under the Arch JDA, the amount of production lost from a CBM well at the end of its fourth year, for example, is established by determining the amount of production remaining in the model well after year four. The value of that lost production is then reduced to present value by application of a discount rate.

The Arch JDA has obvious benefits for all parties concerned. Although it is the junior lessee that took its coal lease subject to the obligation not to interfere with the operations or resources of the senior oil and gas lessees, Arch obtained the right to advance its surface coal mine without restriction, delay or limitation. RIM is allowed to drill CBM wells and to produce as much CBM as possible in advance of the coal mine and is compensated for CBM resources that are unavoidably lost. The State and Federal governments receive prompt and full payment of royalties and taxes on the expedited production of the entire coal resource, on the portion of the CBM resource that is actually produced by RIM and on payments made by Arch to RIM for CBM that cannot be recovered from wells that must be abandoned. The government and its resources are not tied up in a cumbersome and inappropriate condemnation scheme and the coal and oil and gas operators work together in a cooperative, rather than an adversarial, relationship. Most importantly, the Arch JDA encourages the production and recovery of both coal and CBM and minimizes the waste and venting into the atmosphere of non-renewable energy resources.

While a consensual approach such as the Arch JDA has myriad and obvious benefits, coal companies will not be motivated to enter into such arrangements if they are afforded the right of condemnation at taxpayer expense. As profit motivated businesses, coal companies would certainly prefer to condemn the CBM resource at taxpayer expense than to make payments under a joint development agreement.

On July 7, 2000, RIM entered into a Joint Development Agreement with Kennecott covering the portion of the Thundercloud Coal Lease that Arch had assigned to Kennecott. This Joint Development Agreement allows both companies to conduct their respective operations on the lands at issue. RIM holds rights to develop coalbed methane (CBM) in the area pursuant to senior federal oil and gas leases dating from the 1960s. The Joint Development Agreement will allow coal mining operations to proceed throughout the conflict acreage without interference or delay and, at the same time, will allow existing CBM wells to

produce up until the last possible date.

Most recently, RIM and Kennecott entered into a Joint Development Agreement dated August 23, 2001. This Joint Development Agreement covers almost 5,000 acres known as the North Jacobs Ranch Tract, which Kennecott hopes to lease for future coal mine expansion, as well as thousands of adjacent acres where Kennecott already holds coal leases. As with the other Joint Development Agreements, this agreement will allow coal mining operations to proceed throughout the conflict acreage without interference or delay. RIM will also be able to operate CBM wells until the coal mine arrives. The BLM approved and blessed this Joint Development Agreement by the execution of a Memorandum of Understanding, in which all parties concerned have confirmed that the Joint Development Agreement will provide a viable framework for the development of coal and CBM and that the amounts to be paid to the CBM parties for their unavoidable losses constitute "appropriate compensation."

RIM has now resolved all of its conflicts with the coal companies. RIM has entered into three JDAs, with two major coal mines, covering more than 10,000 acres of federal land. Pursuant to these JDAs, both coal mining and CBM production are proceeding as fast as possible in the conflict area. RIM has already drilled 95 CBM wells in the conflict area itself and 28 additional wells on immediately adjacent acreage. RIM is drilling eight new CBM wells in the Hilight Field every month. CBM production from the South Hilight Unit has recently been averaging 11,000 MCF per day and in the past nine months a total of 2.336 billion cubic feet of CBM has been sold. Installed compression capacity on the conflict acreage presently totals 13,500 MCF per day and requests are pending for an additional 4,500 MCF per day. RIM and its partners have spent approximately $6.5 million in developing the conflict acreage and present estimates of the CBM reserves in this area are 25 to 30 billion cubic feet. This is a substantial amount of CBM that is being produced to meet our country's energy needs and on which production royalties and severance taxes are being paid to the federal and state governments. Moreover, pursuant to these JDAs, coal mining has not and will not be delayed even one day.

Under the existing JDAs, the coal and CBM operators are cooperating and coordinating their respective operations and the production of both coal and CBM is being optimized. This has all been accomplished by consensual agreement, without the need for federal legislation, the suspension or termination of oil and gas leases, the taking of vested senior property rights, the use of federal subsidies and tax credits or administrative and judicial condemnation proceedings, all of which are contemplated under HR 2952.

In order to try to establish a need for condemnation legislation, where none exists, the proponents of HR 2952 have resorted to attacking and misrepresenting the Arch JDA. They allege that Arch was forced to enter into the Arch JDA under duress and that it must pay RIM a "multiplier" of the fair market value of the CBM resource. These are quite simply fabrications and distortions. Consider, in particular, the following facts:

1. In entering into the Arch JDA, Arch was no more under duress than was RIM. Both parties needed to enter into the Arch JDA in order to obtain permits to operate within the Thundercloud Tract. RIM would have preferred to produce the CBM resource without interference or to receive more adequate compensation for its losses. Neither Arch nor RIM was entirely pleased with the result, but the compromise that was ultimately struck was fair and appropriate;

2. Under the Arch JDA, Arch does not pay for the full value of the existing CBM resource, as would be required in connection with condemnation. Once Arch's coal highwall comes within a critical distance of a CBM well and the well is shut-in, Arch is obligated to compensate RIM only for the loss of remaining production. Arch pays nothing for the value of CBM that can be recovered by RIM in advance of the surface coal mining operation;

3. The amount and value of lost CBM production is determined by reference to a model well for the area. This model well was proposed by Arch, not by RIM, and was based on a BLM study of actual production

from 85 CBM wells operating nearby in the PRB;

4. The value of lost production from a CBM well is reduced to present value prior to payment to RIM at an extremely high discount rate. The applicable discount rate is defined as nine percentage points above the "Ask Yield" for U.S. treasury notes with a maturity of ten years;

5. In order for any compensation to be payable to RIM for the loss of a CBM well, the well must be drilled prior to January 1, 2002. Otherwise, Arch pays RIM nothing at all for the loss of a CBM well; and

6. The BLM and the State of Wyoming encouraged and supported the Arch JDA and executed the MOU which affirmatively blesses it.

Based upon these facts and provisions, as well as others, it should be clear that the Arch JDA does not require Arch to pay more than the fair market value of the CBM resource. As the actions and concurrence of Arch, the BLM and the State of Wyoming suggest, the JDA presents a viable, balanced and equitable mechanism to resolve disputes between coal and CBM operators in the PRB.

The coal companies have sometimes argued that they have overpaid for CBM in conflict areas by noting that they can purchase oil and gas leases elsewhere in the PRB for a significantly lower price per acre. But all acres are not the same. Under JDAs, CBM lessees are being compensated for lost gas reserves, not lost acres. It stands to reason that coalbed methane reserves are often greatest in areas where the coal is also the thickest and most valuable. Comparisons to the average price of oil and gas leases throughout the PRB are patently misleading. CBM lessees have been fairly, but not overly compensated for their leases under the JDA

Virtually all of the conflicts that have arisen to date between coal and oil and gas producers in the PRB have been resolved by consensual agreement. In September 1999, Arch and RIM entered into the Arch JDA covering thousands of acres in the Thundercloud Tract. Arch and RIM also reached a contractual settlement in the Jayson Unit, at the northern end of the Hilight Field. In July 2000, RIM reached agreement with Kennecott on the Assigned Lands in the South Hilight Unit. In August of this year, RIM and Kennecott entered into a Joint Development Agreement covering the North Jacobs Ranch Tract and thousands of adjoining acres. Kennecott and M&K also entered into a settlement regarding their conflict over deep oil and gas in the South Hilight Unit. Contractual solutions have worked and are working in the PRB. Once the disincentive of HR 2952 is removed, there is every reason to believe that any additional conflicts that might arise in the future will also be resolved contractually. There is simply no need for intervention by Congress or the enactment of Federal condemnation legislation.

III. MAJOR PROBLEMS WITH HR 2952

A. Federal Condemnation Legislation Is Unnecessary and Inappropriate, It Discourages Both the Resolution of Conflicts by Private Agreements and the Cooperative Development of Coal and CBM.

Federal condemnation legislation is not needed in order to resolve conflicts between coal and oil and gas operators in the PRB. The BLM and the State of Wyoming have policies to address these conflicts. These policies have been carefully developed over a number of years and give appropriate and constitutionally required consideration to issues such as the protection of vested property rights. Under the system that has evolved, junior lessees take their leases subject to the express obligation not to interfere unreasonably with orderly development and production under senior leases for other resources.

In situations where the junior lessee controls the more valuable resource and cannot effectively operate without unduly interfering with the resources or operations of a vested senior lessee, the parties have customarily and routinely entered into agreements whereby the junior lessee buys-out the senior lessee or the parties otherwise agree upon mutually satisfactory arrangements for joint development of their respective resources. This system, in which conflicts are ultimately resolved by private agreement, has worked well over the years in several different locations and in connection with conflicts between various resources. In fact, this system has already worked effectively to resolve conflicts between coal and oil and gas operators in the PRB.

HR 2952 discourages both the resolution of conflicts by private agreement and the cooperative development of coal and CBM. Private agreements, such as the JDAs between RIM and each of Arch and Kennecott, allow surface coal mining operations to proceed without delay or interference, encourage the production and recovery of CBM in advance of coal mining and provide for the payment of appropriate compensation for resources that are unavoidably lost. There are obvious benefits for all parties involved. However, if coal companies are afforded the right to condemn the CBM resource at tax payer expense, they will not be motivated to enter into such arrangements.

HR 2952 unnecessarily involves the Federal government, Federal legislation and Federal subsidies in what is essentially a private and local dispute that can readily and equitably be resolved through private agreement, as many similar conflicts have routinely been resolved in the past. Without the inducement of the "better deal" that certain coal companies hope to obtain through HR 2952 at taxpayer expense, future conflicts in the PRB can quickly be resolved through private negotiation and agreement, with no delays whatsoever to coal operations and without the use of Federal funds. Such agreements can provide for the cooperative recovery of coal and CBM.

B. Granting Coal Companies the Right of Condemnation Is Inconsistent With the Sanctity and Priority of Private Property Rights on Which Our System is Based and Sets a Dangerous and Inappropriate Precedent

HR 2952 delegates the sovereign's power of condemnation to private coal companies and allows that power and Federal funds to be used to terminate vested senior property rights held by smaller domestic oil and gas companies. The bill erodes the sanctity of private property and the certainty of rights that have allowed parties to invest with security in the development of our country's natural resources.

HR 2952 also sets a dangerous precedent for the manner in which we manage our public lands and resources. If coal companies are granted the right of condemnation in the PRB, a strong argument can and will be made that other conflicts between competing mineral developers (and, for that matter, conflicts between other competing land uses and values) should be resolved in the same way. In a system that relies on condemnation to resolve conflicts, rather than the priority of property rights, the big and politically powerful will always prevail over smaller interests. Moreover, because of the insecurity and uncertainty inherent in such a system, few will be willing to invest in the development of our natural resources. Our traditional system, based on the sanctity and priority of property rights, has worked well and does not need to be replaced by a condemnation system.

Implementation of a condemnation solution is a radical and global fix to what is essentially a local problem. The right of condemnation must only be granted to private companies in exceedingly rare and unique circumstances and where absolutely required by a compelling public interest. As discussed throughout this testimony, coal companies simply do not need the right to condemn CBM in the PRB.

C. HR 2952 Will Encourage the Venting of Methane, a Potent Greenhouse Gas, Into the Environment.

HR 2952 encourages coal producers to condemn and vent CBM into the atmosphere at taxpayer expense. There will be no incentive for coal companies to enter into joint development agreements for the cooperative development and recovery of CBM in advance of coal mining. Coalbed methane is one of the most potent greenhouse gases and contributes significantly to global warming when released into the atmosphere. It has been estimated, on behalf of the United States Department of Energy, that methane is 56 times more detrimental to the environment (in terms of global warming potential) than C02.[8] It has also been estimated, in a study approved by the BLM, that the Jacobs Ranch and Black Thunder Mines alone are venting 2.3 million cubic feet of CBM per day.[9] While the environmental effects of this venting are not yet fully understood, it is clearly unwise to encourage such emissions through the enactment of Federal legislation.

D. HR 2952 Will Encourage the Waste of CBM, A Clean-burning and Non-Renewable Energy Resource.

When captured and put to beneficial use, CBM is one of the cleanest burning fuel resources. HR 2952 encourages large volumes of this non-renewable energy resource to be condemned, lost and wasted forever.

In a recent study entitled "Meeting the Challenges of the Nation's Growing Natural Gas Demand," dated December 25, 1999, the National Petroleum Council estimated that, while the United States currently produces only 22 trillion cubic feet of natural gas annually, by the year 2015 the anticipated demand will reach 31 trillion cubic feet. In order to meet this growing demand, production of natural gas must be dramatically increased.

CBM resources, especially in the Rocky Mountain region, represent a significant portion of our nation's known and potential gas resources. The Gas Research Institute estimates that the amount of CBM gas in place in the PRB is 39 trillion cubic feet, of which 9.4 trillion cubic feet is recoverable. The Gas Research Institute further estimates that, if properly developed, this resource could yield $5.3 billion in production taxes and royalties alone. A substantial investment has already been made in the development of CBM in the PRB. The Wyoming Independent Producers Association estimates that, as of 1999, Wyoming CBM developers had invested approximately $290 million in drilling and completion costs and another $400 million in lease acquisitions (60% Federal, 35% fee and 5% State). Within the next year, another $295 million was to have been invested in pipelines and compression stations. When the Fort Union and Thunder Creek Pipelines are operating at their maximum capacity of I billion cubic feet per day, which is five times greater than the rate at which they are currently operating, the State of Wyoming and producing counties can expect approximately $300,000 per day in tax revenues and royalties at today's natural gas price. But the realization of these benefits is dependent upon the implementation of policies and practices that encourage and allow the production of the CBM resource.

In keeping with fundamental notions of good stewardship of our country's non-renewable natural resources, and in order to meet the dramatically increasing demand for natural gas in the United States, we need to develop policies that encourage the recovery of this valuable and clean-burning energy resource, not enact legislation that results in its irrevocable loss for all generations.

E. Pursuant to HR 2952, Federal Funds Are Used to Condemn CBM On Behalf of Coal Producers; Royalties and Taxes on CBM Are Also Lost.

HR 2952 provides that amounts paid by coal companies to condemn CBM may be recovered by deductions from their Federal coal production royalties. Effectively, the taxpayers will be paying condemnation awards on behalf of the coal companies. Additionally, both the State and Federal governments are forced to forego the collection of production royalties and taxes on CBM that is condemned rather than produced. RIM estimates that, for the 5,200 acres covered by the JDA between Arch and RIM, the cumulative cost to the Federal government of HR 2952 would have been $22.6 million. This area is less than one **fifth** of one

percent of the total acreage covered by HR 2952.

In contrast, pursuant to cooperative development agreements such as the JDAs, the State and Federal governments receive prompt and full payment of royalties and taxes on the production of the entire coal resource, on the portion of the CBM resource that is actually produced in advance of the coal mine and on payments made to the CBM operator for CBM that cannot be recovered from wells that must be abandoned.

It defies understanding as to why the Federal government should incur these significant fiscal costs in order to assist coal companies to condemn senior oil and gas resources, which would otherwise have been produced and generated significant royalty and tax income to the United States.

F. HR 2952 Does Not Provide Full or Fair Compensation to CBM Lessees for the Loss of Their Resource; The Bill Requires That Compensation Be Paid For Only a Small Portion of the CBM That Will Actually Be Lost and Wasted As a Result of Coal Mining.

HR 2952 requires coal companies only to compensate oil and gas lessees for CBM that is lost from the specific oil and gas lease to be mined. However, as discussed previously, surface coal mining will cause the loss of CBM from a much larger area. RIM has conducted a drainage study which establishes that CBM in the Hilight Field will flow several miles to the exposed face of a coal highwall and be vented into the atmosphere[10] . This study has been approved by the BLM.[11] CBM lessees must be compensated for all CBM that will be lost and wasted as a result of coal mining, not just from the specific oil and gas lease that will actually be mined. When dealing with a gas in a porous structure, there is no rational basis for distinguishing between lost gas that was originally situated beneath the lease actually mined and lost gas originally situated beneath adjacent leases. This would be akin to putting a hole in a tire and then disclaiming responsibility for the loss of air from portions of the tire that are not directly beneath the hole. HR 2952 needs to account for the huge volume of CBM from surrounding oil and gas leases that will be lost through drainage and venting.

This problem is compounded by the fact that HR 2952 allows coal operators to condemn oil and gas leases in sequential steps, and as needed for their operations, rather than requiring the condemnation of an entire area in one proceeding. This will dramatically reduce the compensation payable for lost CBM. As the coal operator mines on one oil and gas lease, CBM will be drained and vented from surrounding oil and gas leases. Then, when the coal operator condemns the next oil and gas lease, the CBM resource will be valued at a significantly lower level due to losses of CBM already caused by coal mining. In this manner, coal operators will pay for lost production from a specific CBM lease only when their coal mine has come close to the lease and destroyed its remaining value. Oil and gas lessees will receive cents on the dollar for the loss of their CBM resource.

HR 2952 allows coal companies to commence mining in conflict areas long before the amount of compensation payable to the displaced oil and gas lessees is determined. Even more incredibly, the bill provides that the CBM lessees will not be compensated for CBM that is lost as a result of such mining during the months preceding the award determination.

Pursuant to HR 2952, CBM lessees will bear an intolerable burden to establish the quantity and value of CBM lost from lands that have not yet been drilled. This is particularly unfair in view of the fact that CBM operators have often been materially delayed or precluded from drilling by regulatory authorities and/or by coal companies that control the surface of the lands at issue. The ownership of CBM and CBM leases constitute private property subject to the full protections of the United States Constitution, regardless of whether or not yet drilled and producing. HR 2952 needs to provide appropriate mechanisms to test and value the CBM resource in undrilled areas in order to insure that full and fair compensation is paid for the lost resource.

In addition to considerations of equity and fairness, the United States Constitution requires payment of just

compensation for private property taken through condemnation. As currently drafted, HR 2952 would be subject to formidable constitutional challenge because it fails to compensate senior oil and gas lessees for a substantial portion of the CBM that would be lost as a result of surface coal mining.

G. HR 2952 Totally Disregards Seniority.

HR 2952 totally disregards the seniority of the condemning and condemned parties. Junior coal lessees, as well as junior oil and gas lessees, took their interests with full knowledge of the existence of a prior lease and of the need to avoid interference. Under HR 2952, not only will junior lessees be allowed to condemn senior leases, but senior lessees may be required to condemn and pay for junior leases. This would be a totally inappropriate and unjustified windfall for the junior lessees and would impose an additional and unnecessary expense upon the United States, which funds the payment of condemnation awards through deductions from Federal royalties.

H. HR 2952 Allows Coal Lessees to Condemn Oil and Gas Leases Without Regard to the Relative Values of the Resources and With No Public Interest Determination.

HR 2952 allows coal lessees to condemn conflicting oil and gas leases without regard to, or consideration of, the relative values of the subject coal and oil and gas resources. Accordingly, a coal lessee could compel the condemnation and termination of oil and gas leases that far exceed the value of the coal in the subject conflict area. Such condemnation would clearly not be in the public interest. This point underscores certain of the constitutional shortcomings of HR 2952. Essentially, the bill delegates the power of eminent domain to private parties, allows private condemnation to proceed with no determination of public benefit and does not require full and fair payment for lost property rights.

I. HR 2952 Is Convoluted, Difficult to Understand and Embodies Certain Other Procedural and Constitutional Shortcomings.

HR 2952 contains numerous provisions and procedures that violate due process, including limitations on rights of appeal, the use of experts paid by interested parties both to establish the condemnation award and to testify in court, and the right of coal operators to commence mining operations prior to the conclusion of proceedings and the payment of a condemnation award.

In addition to containing constitutionally questionable provisions, including the delegation of condemnation rights to private parties, HR 2952 contains complex and unclear terms, tests and standards. This would likely result in significant litigation which, in turn, will delay the resolution of conflicts between resource users in the PRB.

IV. CONCLUSIONS

HR 2952 unnecessarily involves the Federal government, Federal legislation and Federal subsidies in what is essentially a private and local dispute that can readily and equitably be resolved through private agreement. The bill encourages the condemnation, venting and waste of CBM into our atmosphere at taxpayer expense, rather than promoting the cooperative production and recovery of all valuable energy resources. In establishing condemnation as a means to resolve conflicts between resource users, HR 2952 erodes the sanctity of private property rights and sets a dangerous precedent for the management of our public lands. HR 2952 is a bad bill for the environment and for the prudent stewardship of our non-renewable natural resources. It is also a bad bill for the Federal budget. By entering into JDAs with Arch and Kennecott, RIM has now resolved, in a positive manner, all of the significant conflicts between coal and CBM in the PRB. If and when future conflicts develop, we are confident that they can be resolved by agreement in the same way that the existing conflicts have all been resolved. Joint development agreements have successfully resolved and will continue to successfully and appropriately resolve all conflicts. **Condemnation legislation, Federal intervention and taxpayer subsidies are simply not appropriate**

and not needed.

Thank you for the opportunity to appear before the Committee and to provide this testimony.

FOOTNOTES

1. The Hilight Field is comprised of four oil and gas units: the Grady Unit, the Jayson Unit, the Central Hilight Unit and the South Hilight Unit.

2. The portion of the Thundercloud Coal Lease assigned to Kennecott was given a new serial number (WYW 148123). Pursuant to applicable Federal regulations, at 43 CFR § 3453.2-5, the Assigned Thundercloud Lease constitutes a separate and distinct Federal coal lease on the same terms and conditions as the original Thundercloud Lease.

3. J. Craig Creel, "Drainage of Coalbed Methane Resources, South Hilight Unit-Hilight Field, Campbell County, Wyoming" (March 18, 1999). This study also concludes that the Jacobs Ranch and Black Thunder Mines are venting in excess of 2.3 million cubic feet of CBM per day.

4 Letter from Asghar Shariff, Chief of Wyoming Reservoir Management Group, BLM, to Mr. Stephen Rector of RIM, received May 4, 1999.

5. Letters dated May 21, 1999 from Alan R. Pierson, Wyoming State Director, BLM, to James Aronstein (representing RIM), Morris W. Kegley and Jacobs Ranch Mining Company (all representing Kennecott), Blair M. Gardner and Thunder Basin Coal Company (representing Arch) and Peter A. Bjork and M&K Oil Co., Inc. (representing M&K).

6. Letter dated September 28, 1999 from Alan R. Pierson, Wyoming State Director, BLM, to representatives of Arch, RIM and the State of Wyoming.

7. Letter dated September 27, 1999 from Stephen A. Reynolds, Director of Office of State Lands and Investments, State of Wyoming, to representatives of Arch, RIM and the BLM.

8. M. Q. Wang, "GREET (Greenhouse Gases, Regulated Emissions and Energy Use in Transportation) 1.5 - Transportation Fuel Cycle Model" Volume 1, Center for Transportation Research, Energy Systems Division, Argon National Laboratory (August 1999) - work sponsored by the United States Department of Energy, Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Transportation Technologies.

9. See footnotes 3 and 4, sup

10. See footnote 3, supr

11. See footnote 4, supra.